

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MASTR ADJUSTABLE RATE MORTGAGES
TRUST 2006-OA2, et al.,

Plaintiffs,

-against-

UBS REAL ESTATE SECURITIES INC.,

Defendant.
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CASTEL, U.S.D.J.

USDS SDNY DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: <u>8-21-15</u>

12-cv-7322 (PKC)

ORDER

Defendants now wish to strike plaintiffs' expert witness reports and stay expert discovery. In support, they cite to the content of the reports, prior rulings and statements of the Court, as well as statements of opposing counsel.

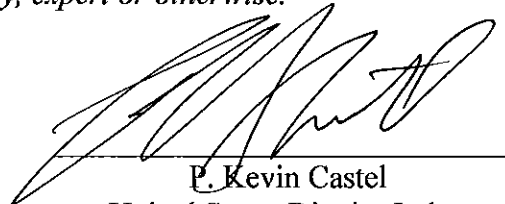
This Court has written at some length on the issues presented in this breach of contract action. The Court heard extensive oral argument on an application to reopen discovery. In reopening discovery, I wrote: "Prudent lawyers make predictive judgments and, because these judgments may prove wrong, they are prepared with alternative theories to prove their case; all of their eggs are not in one basket." (Order of March 11, 2015.) I further cautioned as follows: "*Counsel is warned that in granting the extension, no ruling is intended or implied on the relevance, probative value, efficacy or admissibility of any particular form of evidence or the suitability of any particular methodology, expert or otherwise.*" (Id.; emphasis-in-the-original.)

It would be an unwise exercise of discretion for this Court to grant a time-out in this soon-to-be three year old case with 297 docket entries to determine whether plaintiffs' new theories are viable. If plaintiffs have pursued unviable theories of liability, there will be time

enough to explore that at the motion *in limine* stage. If their expert theories (on round two) are not viable and their case cannot otherwise proceed to trial, the case will be over and the plaintiffs' remedies will lie in an appellate tribunal.

Defendant's application is DENIED without prejudice to renewal in a motion *in limine* submitted as part of the Final Pretrial Submissions which are to be fully briefed and submitted by February 12, 2016. *Counsel is warned that this Order is not intended to imply any view on the relevance, probative value, efficacy or admissibility of any particular form of evidence or the suitability of any particular methodology, expert or otherwise.*

SO ORDERED.



P. Kevin Castel
United States District Judge

Dated: New York, New York
August 21, 2015